IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19917 of 2005
Date of Decision: 11.10.2006

Megha Anand ...Petitioner

Versus

State of Punjab and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ishwar Lal, Advocate, for the petitioner.
Shri Sushant Maini, DAG, Punjab.
Shri J.S. Jhaj, Advocate, for respondent No.2.
Ms. Balwinder Kaur, Advocate, for respondent No.3.

JUDGMENT

The petitioner has sought a writ in the nature of mandamus directing the respondents to immediately shift/admit the petitioner in BDS course in Government Dental College Patiala or Amritsar from respondent No. 3- Institute, where she is undergoing the BDS course in pursuance of the counselling held on 12.9.2005.

In Pre-Medical Entrance Test for the academic year 2005-06, the petitioner secured 596 marks and was assigned rank 359. In the first counselling for admission to BDS course held on 12.9.2005, the petitioner was allotted seat in Baba Jaswant Singh Dental College, Ludhiana, but subsequently, the petitioner was shifted to respondent No. 3 College as a general category candidate against the Government seat and a provisional annual fee of Rs.55,000/- was deposited on 27.9.2005. In pursuance of another public notice issued for second counselling for admission to

MBBS/BDS course for left out seats, the petitioner appeared on 25.9.2005 for admission in BDS course. The petitioner opted and was placed in waiting list at serial No. 3. Such waiting list was maintained in terms of Clause 10 part II of the Prospectus. Clause 10 of the Prospectus, reads as under:-

> "All those candidates who are eligible to be counselled can opt to be on waiting list irrespective of the fact whether they have been allotted a seat or not. In other words a candidate who has been admitted in BDS course may opt to be kept on waiting list for seeking admission in any other college/course. Even those candidate who report for counselling but do not accept a seat available to them at the time of counselling can opt to be kept on waiting list. It is important to note that in order to be kept on waiting list, a candidate has to report for counselling on the notified date and time, failure to do so shall result in forfeiture of candidate's right to be kept on waiting list.
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> Waiting list of all successful candidates will be prepared by the Chairman, Selection Committee and the details of vacant seats shall be displayed on the notice board."

The grievance of the petitioner is that third counselling for filling up of vacant seats in Government Medical Colleges for MBBS course was conducted on 30.9.2005. In such counselling, three seats in the Dental Colleges became available i.e. two seats in Government Dental College, Patiala and one in Government Dental College, Amritsar. But the

said seats were not filled up from amongst the candidates from the waiting list including the petitioner and, therefore, the action of the University in not admitting the petitioner is subject matter of the challenge in the present writ petition.

On behalf of the respondent-University, it has been pointed out that 30.9.2005 was the counselling fixed for MBBS course only and not for BDS course. There was no notification for counselling for BDS course issued by the Punjab Government and, therefore, the waiting list prepared in pursuance of the second counselling, was not operative and, thus, the petitioner cannot claim admission against the seats which had fallen vacant on 30.9.2005 in the Government Dental Colleges at Amritsar and Patiala.

Learned counsel for the petitioner has vehemently argued that in the second counselling on 30.9.2005, three seats have fallen vacant and as the petitioner was available for counselling, therefore, the University was bound to admit the petitioner in either of the two Government Dental Colleges. It has been further argued that it is not a case of fresh admission but only a shifting from one Dental College to another, therefore, cut off date fixed by the Dental Council of India in pursuance of the direction of the Hon'ble Supreme Court, on 30.9.2005, cannot be made applicable in respect of the petitioner.

The public notice (Annexure P.5) for counselling for the vacant seats in the Medical Colleges at Faridkot and Patiala, was only in respect of the MBBS course. The said public notice does not deal with the filling up of any seats in Dental College at Amritsar or Patiala. In the absence of any public notice for filling up of seats from amongst the candidates mentioned in waiting list, the petitioner cannot claim any right of admission to a

Government Dental College, merely for the reason that the seat has become available on the said date on account of admission of three candidates to the MBBS course. Even otherwise, the averment made in para No. 9 of the writ petition that the petitioner was available for admission at the time of counselling on 30.9.2005 seems to be an afterthought. In Annexure P.6 dated 18.10.2005 and Annexure P.7 dated 14.12.2005, the petitioner has not alleged that she was present at the time of counselling on 30.9.2005. Still further, the argument that it is not a case of fresh admission but shifting, cannot be accepted. Each of the Dental College is a separate entity and has a separate admission rules. The University recommends the candidate for admission on the basis of common entrance test, but the admission is granted by each of the Dental College. Therefore, mere fact that the benefit of fee adjustment is contemplated to be given in respect of a candidate, who is admitted in subsequent counselling, cannot be interpreted to mean that it is only a shifting and not a fresh admission. After admission to one Dental College, the shifting can be only in terms of the migration rules framed by the Dental Council of India. Therefore, it is only a fresh admission, which could not have been made beyond 30.9.2005, the date fixed by the Dental Council of India.

In view of the above, I do not find any merit in the present petition. Consequently, the same is dismissed.

11-10-2006 **(HEMANT GUPTA)**
ds **JUDGE**